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August 16, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423-0001

207653

Re: STB Finance Docket No. 35397

Dear Ms. Brown:

The Massachusetts Department of Transportation (MassDOT) Rail and Transit Division has significant concerns regarding the applicant's filing, STB Finance Docket No. 35397, ABC & D Recycling, Inc.-Lease and Operation Exemption-a Line of Railroad in Ware, MA. Consequently, MassDOT strongly supports the Town of Ware's verified petition that the Surface Transportation Board ("STB") reject and/or dismiss the Verified Notice of Exemption for Lease and Operation of a Rail Line Pursuant to 49 USC §10901 and 49 CFR §1150.31 ("Notice") sought by ABC&D Recycling, Inc. ("ABC&D") and to enter a stay of the effective date of the exemption pending ruling on the petition.

The MassDOT Rail and Transit Division, pursuant to Section 4 of Chapter 161C of the General Laws of the Commonwealth of Massachusetts, is responsible for "the development, promotion, preservation, and improvement of an adequate, safe, efficient and convenient rail system for the movement of passengers and freight in the [C]ommonwealth." Accordingly, the MassDOT Rail and Transit Division is responsible for implementing policies and programs to support the growth of freight rail in the Commonwealth. In addition to being the principle agency focused on railroad policy issues in the Commonwealth of Massachusetts, MassDOT is the owner of the right of way and track known as the Ware River Secondary, which is licensed to the Mass Central Railroad Company ("Mass Central"). Mass Central presently provides rail services to ABC&D for its existing business. As a result, MassDOT has a considerably strong policy interest in supporting the growth of freight rail business along the Ware River Secondary.

However, MassDOT strongly disagrees with the approach undertaken by the applicant in this filing. In particular, MassDOT believes that the freight rail business cannot grow in Massachusetts without the support and cooperation of the local communities in which shippers locate. In this instance, MassDOT agrees with the Town of Ware that ABC&D's true motivation in submitting this Notice is not to be a common carrier, but, rather, to obtain the protection of federal preemption for an intended municipal solid waste ("MSW") facility. MassDOT does not believe either its policy objective, growing freight rail business throughout the Commonwealth of Massachusetts, or the purpose of the applicable federal law is served through this attempt to circumvent local and state permitting. In particular, prior to the current permitting dispute with the Town of Ware as well as this Notice, ABC&D has demonstrated

no interest in providing common carrier services in Massachusetts. MassDOT agrees with the Town of Ware that ABC&D has submitted this filing solely for the purpose of attempting to circumvent the Town of Ware Board of Health's site assignment denial by seeking federal preemption. In doing so, ABC&D undermines the community support necessary to develop businesses throughout Massachusetts that will ship by rail.

MassDOT also notes that certain critical facts were not addressed in the applicant's filing with the Board. In 2005, MassDOT, which was formerly known as the Executive Office of Transportation, granted ABC&D a revocable license ("License") right to access the siding and spur line. Indeed, the siding and spur line upon which ABC&D seeks to declare itself a common carrier is actually owned, in part, by the MassDOT. The License's five (5) year term expires on December 5, 2010 and, after the expiration of the initial five (5) year term, the License can be terminated at any time by MassDOT upon 180 days notice. Moreover, the License was specifically granted by MassDOT with regards to the facility's construction and demolition operation, based upon MassDOT's understanding that this operation had received the appropriate local permits. Notably, the License does not envision ABC&D providing common carrier services on the license premises. Furthermore, the License would not extend to ABC&D's intended MSW processing and, in fact, any MSW use would require a new or amended license agreement to be negotiated with MassDOT.

Based upon the reasons discussed above, MassDOT supports the Town of Ware's petition to reject and/or dismiss the Notice filed by ABC&D.

Sincerely,



Jamey Tesler

Legal Counsel

Massachusetts Department of Transportation

Cc (Via email): David Wojcik, Esq., Counsel for the Town of Ware
Leonard Singer, Esq., Counsel for ABC&D Recycling, Inc.
Laura Swain, Esq., Massachusetts Department of Environmental Protection